

Introduction: Criminal Law Pedagogy

Ellen S. Podgor*

In the summer of 2012, law professors from several law schools came together at the Southeastern Association of Law Schools (SEALS) to exchange ideas on different methods used to teach substantive criminal law. Each participant was asked to provide one example of something that worked well for them in their criminal law class. Professors with varying degrees of experience in teaching this class participated in the discussion, all offering interesting and innovative suggestions for others to use in their classes. This discussion produced papers that comprise the articles in this symposium on criminal law pedagogy.

These short papers are divided into three parts. In the first set of papers are examples of suggestions for teaching specific topics within the criminal law course. They range from handling the transition to law school on the opening day of class, to topics related to rape and homicide. The second set of papers offers skills that transfer across many different areas covered in the substantive criminal law course. The third set of papers emphasizes the challenges faced in teaching criminal law, and how best to meet these problems. The line between these three sets of papers is fluid and many of the substantive pieces offer strong skills suggestions, while those suggesting different approaches to the course offer as examples specific subject matters within the criminal law course.

I. SPECIFIC TOPICS

Looking at the first set of papers, it is appropriate to start with Kami Chavis Simmons's piece, *The First Day of Criminal Law: Forgetting Everything You Thought You Already Knew*,¹ as this piece looks at the opening session of the course. She offers suggestions of how to move students from the non-lawyer mode of thinking to conceptualizing ideas in a legal framework. As one might suspect, tackling the media buildup within students' minds is something that one needs to consider and approach from the start of the course.

A reality of teaching criminal law is recognizing that the system is not perfect, and that there are miscarriages of justice. Professor Cynthia E. Jones, in her essay "I AM Ronald Cotton": *Teaching Wrongful Convictions in a Criminal Law Class*,² sets a tone in her class of the importance of criminal law cases, the

* Gary R. Trombley Family White-Collar Crime Research Professor and Professor of Law, Stetson University College of Law.

¹ Kami Chavis Simmons, *The First Day of Criminal Law: Forgetting Everything You Thought You Already Knew*, 10 OHIO ST. J. CRIM. L. 605 (2013).

² Cynthia E. Jones, "I AM Ronald Cotton": *Teaching Wrongful Convictions in a Criminal Law Class*, 10 OHIO ST. J. CRIM. L. 609 (2013).

handling of these cases, and the role of attorneys in the criminal justice process. In her opening classes she explores innocence cases through an exercise that awakens students to problems in the criminal justice system.

Sanjay K. Chhablani, in his piece *An Exercise Exploring the Rationales for Punishment*,³ offers a collaborative exercise that he uses throughout the criminal law course. For those, like myself, who make punishment the centerpiece of their criminal law course, this exercise allows students to differentiate crimes, elements such as mens rea within the statutes, the role of participants in the system, and the importance of sociological implications of punishment.

Perhaps one of the most difficult areas in criminal law for students is the subject of mens rea. Catherine Hancock tackles this aspect of the course in her piece, *Teaching Mens Rea with Flores-Figueroa: Using the Oral Argument to Unwrap the Case*.⁴ And as the title suggests, she takes the *Flores-Figueroa* case and brings it to life through a close dissection of the Supreme Court's oral argument. She offers a step-by-step approach to how to use this methodology to teach different levels of mens rea.

Judith M. Barger authors an essay titled, *Law and Order in the Emerald City: Using The Wizard of Oz to Illustrate Homicide Principles*.⁵ She discusses how she uses her favorite video clip from *The Wizard of Oz* to provide a context for materials on assault and battery, attempted murder, murder, and self-defense.

Rape is without doubt a sensitive area of the law and as such often difficult to teach. Some professors question whether to omit this crime within the course syllabus.⁶ Susan D. Rozelle, in *Teaching Rape Under Cover*,⁷ offers an approach that uses anonymity, third person statements, and hypotheticals to assist in providing a comfort level when she teaches students this segment of the course.

II. SKILLS

Cynthia Lee, in *Criminal Law Pedagogy: Making Things Clear*,⁸ recognizes the realities of what students seek from our teaching. She tells how students appreciate when we consider their learning abilities and offer them a roadmap of what is to be covered in each class. The importance of offering this at the beginning of the class is stressed in her essay.

³ Sanjay K. Chhablani, *An Exercise Exploring the Rationales for Punishment*, 10 OHIO ST. J. CRIM. L. 613 (2013).

⁴ Catherine Hancock, *Teaching Mens Rea with Flores-Figueroa: Using Oral Argument to Unwrap the Case*, OHIO ST. J. CRIM. L. 617 (2013).

⁵ Judith M. Barger, *Law and Order in the Emerald City: Using The Wizard of Oz to Illustrate Homicide Principles*, 10 OHIO ST. J. CRIM. L. 629 (2013).

⁶ See James J. Tomkovicz, *On Teaching Rape: Reasons, Risks, and Rewards*, 102 YALE L.J. 481 (1992). But see Susan Estrich, *Teaching Rape Law*, 102 YALE L.J. 509 (1992).

⁷ Susan D. Rozelle, *Teaching Rape Under Cover*, 10 OHIO ST. J. CRIM. L. 633 (2013).

⁸ Cynthia Lee, *Criminal Law Pedagogy: Making Things Clear*, 10 OHIO ST. J. CRIM. L. 637 (2013).

Ronald F. Wright recognizes the importance of the legislative process in this statutory course of criminal law. In his essay, *A Criminal Law Atheist Teaching in the Seminary*,⁹ he writes about how he presents the course through a legislative lens. This approach is contrasted with Cynthia Alkon's essay, *Making a Deal in Criminal Law*,¹⁰ where she examines an executive aspect of the course through a practical methodology. She presents two plea bargaining exercises that allow students to use negotiation skills to comprehend the doctrinal material while also infusing ethics and strategy into the construct.

Reflecting generally on the skills one strives to teach in criminal law is Janet C. Hoeffel, in her essay, *Teaching to the Test*.¹¹ She notes the importance of correlating the course examination to what is actually taught in class, and that the test needs to measure the skills that were taught.

Steven I. Friedland in an essay titled, *Role Reversal: Promoting Student Questioning Techniques in a Criminal Law Course*,¹² asks professors to re-examine traditional approaches to teaching this course. He notes that most criminal law classes have students responding to professors' questions. Rather, he states what needs to be learned is the skill of asking questions. Professor Friedland's essay offers a concrete exercise for use in the criminal law class to enhance questioning skills.

III. CHALLENGES

Brian R. Gallini, in his piece *From Philly to Fayetteville: Reflections on Teaching Criminal Law in the First Year . . . Four Years Later*,¹³ and Arnold H. Loewy, in *Why I Authored a Criminal Law Casebook*,¹⁴ both reflect on how preparing their own materials have assisted them in meeting challenges in teaching this course. Professor Gallini tells how he journals each criminal law class and how that allows for reflection on the pedagogy to be used in future classes. He stresses the importance of bringing reality into the classroom and how he accomplishes this with video clips and news stories.

Professor Loewy also discusses the merits of his casebook, such as his ordering of materials and the importance of factoring in time constraints placed on presenting materials in a criminal law course. Time constraints in the criminal law class are clearly something on the minds of those teaching this course. Roger A. Fairfax, Jr., in his essay *Challenges and Choices in Criminal Law Course*

⁹ Ronald F. Wright, *A Criminal Law Atheist Teaching in the Seminary*, 10 OHIO ST. J. CRIM. L. 639 (2013).

¹⁰ Cynthia Alkon, *Making a Deal in Criminal Law*, 10 OHIO ST. J. CRIM. L. 643 (2013).

¹¹ Janet C. Hoeffel, *Teaching to the Test*, 10 OHIO ST. J. CRIM. L. 647 (2013).

¹² Steven I. Friedland, *Role Reversal: Promoting Student Questioning Techniques in a Criminal Law Course*, 10 OHIO ST. J. CRIM. L. 651 (2013).

¹³ Brian R. Gallini, *From Philly to Fayetteville: Reflections on Teaching Criminal Law in the First Year . . . Four Years Later*, 10 OHIO ST. J. CRIM. L. 657 (2013).

¹⁴ Arnold H. Loewy, *Why I Authored a Criminal Law Casebook*, 10 OHIO ST. J. CRIM. L. 661 (2013).

Design,¹⁵ reflects on the choices one has to make when deciding what to cover in the criminal law course.

The ever looming bar examination, and the testing of criminal law on this exam, is considered in Anders Walker's essay, *Criminal Confusion: Addressing the Tension Between Bar Preparation & Practical Skills*.¹⁶ He explains how he educates students on the common law and Model Penal Code distinction needed for their passing the bar. But he also notes the importance of teaching what they need in the real world, actual cases and state codes.

IV. CONCLUSION

In examining all of these essays, several observations can be made. First, it is clear that these professors have an incredible dedication to improving how they teach the criminal law course. Also noteworthy is that they use innovative methodologies to achieve student acceptance of learning the materials. They are not shy to experiment, and they are concerned about disconnects such as imperfections in the criminal justice system, the later bar exam testing on the course material, and how best to construct materials being used to teach the substantive criminal law course.

Throughout these essays it is clear that the *MacCrate Report*¹⁷ is alive and well and that professors are incorporating skills and values into doctrinal courses. Equally compelling is that these criminal law professors understand the lessons from the *Carnegie Report*,¹⁸ and are making certain that in educating today's lawyers we move beyond the case-method approach to consider "the rich complexity of actual situations" and the social and ethical consequences of the doctrinal material.¹⁹

The SEALS discussion forum was considered such a huge success by participants and observers that it was important to share these reflections with others in this written forum. The presentations infused new energy and excitement for teaching this course. It is hoped that professors who teach the course year after year can find these innovative ideas as invigorating as did those participating in the SEALS discussion.

¹⁵ Roger A. Fairfax, *Challenges and Choices in Criminal Law Course Design*, 10 OHIO ST. J. CRIM. L. 665 (2013).

¹⁶ Anders Walker, *Criminal Confusion: Addressing the Tension Between Bar Preparation and Practical Skills*, 10 OHIO ST. J. CRIM. L. 669 (2013).

¹⁷ AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) ("MacCrate Report"). See also Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001).

¹⁸ WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 187* (2007) ("Carnegie Report").

¹⁹ *Id.*